

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

TREATMENT OF RATE INCENTIVES AND
DE MINIMIS RATE INCREASES
FOR PRICE CAP PURPOSES

Docket No. RM2014-3

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(March 17, 2014)

The United States Postal Service hereby submits its initial comments on the proposed rules for the treatment of rate incentives and de minimis rate increases under 39 U.S.C. § 3622(d) and 39 C.F.R. part 3010.¹

The Postal Service is encouraged by the Commission's proposals and believes that they can both bring more clarity to the process under which the Commission implements the price cap and, in certain cases, support the Postal Service's overall pricing flexibility. On the whole, the rules proposed by the Commission reflect that it has benefitted from its review of the various rate incentive and mid-year price adjustment cases submitted by the Postal Service since the enactment of the Postal Accountability and Enhancement Act (PAEA). Nevertheless, the Postal Service is concerned that certain aspects of the proposed rules either fail to afford the pricing flexibility the Commission purports to provide, or could benefit from further clarification. As discussed in greater detail below, the Postal Service recommends that the Commission revise or clarify some of the proposed rules.

¹ Docket No. RM2014-3, Order No. 1879, Notice of Proposed Rulemaking on the Treatment of Rate Incentives and De Minimis Rate Increases for Price Cap Purposes (November 18, 2013) (*hereafter*, "Order No. 1879").

I. Type 1-C Rate Reductions:

On page 4 of Order No. 1879 ("The Order"), issued on November 18, 2013, the Commission notes that proposed rule 3010.23(b)(2) allows the Postal Service to create unused rate adjustment authority from Type 1-C rate adjustments without having to calculate the annual price cap limitation. On page 6 of The Order, the Commission outlines the procedures to recoup the new unused rate adjustment authority, as specified in proposed rule 3010.27. These procedures allow the Postal Service to account for Type 1-C rate reductions by amending the workpapers attached to the Commission's order relating to the most recent Type 1-A or Type 1-B rate adjustment. The new rate authority would be added to the unused rate authority from that Type 1-A or Type 1-B rate adjustment.

While the Postal Service believes that the procedures outlined in proposed rules 3010.23(b)(2) and 3010.27 are appropriate in most circumstances, the recently approved exigent rate increase (See Order No. 1926 from Docket No. R2013-11) provides one complication that requires further clarification. The complication arises due to the exhaustion requirement of 39 C.F.R. § 3010.63(c), which provides for the zeroing out of all unused rate authority for each class of mail before an exigent rate adjustment may be imposed. In this regard, were the Postal Service to apply the proposed Type 1-C rules after an exigent rate increase was approved (but before the next Type 1-A or Type 1-B rate adjustment) the new Type 1-C rate authority would not be applied to the most recent calculation of the unused rate authority. To clarify this issue, the Postal Service suggests that the Commission amend proposed rule 3010.27(a) in a manner that permits the Postal Service to add any unused rate authority

from a Type 1-C rate case to the most recent calculation of its total unused rate authority, regardless of whether that calculation resulted from a Type 1-A, Type 1-B, or Exigent rate case.

II. Rates of General Applicability

On page 9 of The Order, the Commission explains that proposed rule 3010.1(g) defines a *rate of general applicability* as “a rate applicable to all mail meeting standards established by the Mail Classification Schedule and the Domestic Mail Manual.” On the same page the Commission goes on to explain that a rate of general applicability may not “be dependent on factors other than the characteristics of the mail to which the rate applies.” This definition is significant, as only those rate incentives meeting this definition may be included in the percentage change in rates calculation pursuant to proposed rule 3010.23(e). Additionally, the omission of rates published in the International Mail Manual (IMM), as well as inbound international rates, from proposed rule 3010.1(g) raises questions about how such international rates will be treated with respect to the annual calculation of the price cap limitation. To ensure that the Postal Service has a clear understanding of how the Commission intends to apply the proposed definition to rate incentives and certain international rates, the Postal Service requests that the Commission clarify proposed rule 3010.1(g) in its final rule.

While the Commission notes that most of the rate incentives approved in Docket No. R2013-1 would be considered rates of general applicability, it does not comment on whether the rate incentives approved in Docket No. R2013-10 would be classified in the same manner. Based on the Postal Service’s understanding of proposed rule 3010.1(g), it believes that the following rate incentives approved in Docket No. R2013-

10 would qualify as rates of general applicability: Branded Color Mobile Technology, Emerging Technology, Mail Drives Mobile Commerce, Mail and Digital Personalization, EDDM Coupon,² and the Earned Value Promotion.³ As described in proposed rule 3010.1(g), eligibility for these incentives was based solely on the characteristics of presort First-Class Mail / Standard Mail listed in the Mail Classification Schedule (MCS) or Domestic Mail Manual (DMM). In contrast, the Premium Advertising promotion and High Density/Saturation Incentive would probably not have been considered rates of general applicability, because mailers could not qualify unless they met a specific volume threshold from a prior period.⁴ This additional qualification requirement was not a characteristic of Standard Mail listed in the MCS or DMM. The Commission should note any disagreements with the above categorization before proposed section 3010.1(g) is implemented.⁵

The Postal Service also requests clarification on what additional mailing standards in the DMM and MCS can be applied to a rate incentive of general applicability. For example, in the Color Print in First-Class Mail Transactions and Premium Advertising promotions,⁶ qualifying mailings were expected to be Full-Service IMb compliant. Since Full-Service IMb is an optional characteristic of First-Class Mail

² The Postal Service includes EDDM Coupon as a rate incentive of general applicability since the Commission required that the Postal Service allow all potential EDDM customers requesting a coupon to receive one on a first-come, first-served basis.

³ A full description of these promotions is presented in Attachment D to its Notice of Market-Dominant Price Adjustment in Docket No. R2013-10 (as revised October 18, 2013). Order No. 1890 at 77. Further, the Postal Service recognizes that the Branded Color Mobile Technology, Mail and Digital Personalization, and Earned Value Reply Mail Promotions were found to be “not the type of limited-availability promotions at issue in Order No. 1743 [the Tech Credit Order].” Order No. 1890 at 59.

⁴ A volume threshold from a prior period also was the reason that the Tech Credit promotion was not considered a rate of general applicability. Order No. 1743, at 15 (June 10, 2013).

⁵ The Postal Service also requests confirmation that the Samples and Picture Permit promotions from Docket No. R2013-1 qualified as rates of general applicability, even though the Postal Service did not request cap space for these promotions in Docket No. R2013-1.

⁶ Descriptions of these promotions are presented in Attachment D to its Notice of Market-Dominant Price Adjustment in Docket No. R2013-10 (as revised October 18, 2013).

and Standard Mail listed in the DMM, the Postal Service is unclear whether these promotions would have met the definition proposed in section 3010.1(g). The same question would apply if the Postal Service were to require the use Flats Sequencing System (FSS) preparation to participate in a promotion. If promotions and rate incentives are to successfully drive customer behavior in ways that benefit both the Postal Service and mailers, requiring some otherwise optional behaviors is important.

Additionally, with respect to proposed rule 3010.24, the Postal Service opposes the exclusion of rate incentives not of general applicability from being included in the calculation of the annual price cap limitation. Under this proposed rule, volumes from rate incentives not of general applicability would be treated similarly to the volumes from a Negotiated Service Agreement (NSA); the price cap calculation would treat them as if they paid the rates of general applicability, rather than using the prices actually paid. The Commission defends this treatment by saying that it “protect[s] mailers who are ineligible to participate in [rate incentives not of general applicability] from funding reduced rates which only benefit eligible mailers.”⁷ Upon closer inspection however, this logic is flawed.

Though the Commission finds it unfair to force mailers (who do not participate in a rate incentive) to fund reduced rates for other mailers, this type of cross funding is an inherent aspect of the price cap. For example, in Docket No. R2013-7 the Commission correctly approved the addition of unused price cap authority (totaling 0.511 percent) for the Special Services class when the Postal Service began including free insurance with

⁷ Order No. 1879, at 11.

certain (not all) Priority Mail packages.⁸ The approval of this additional rate authority effectively allowed the Postal Service to make other special services mailers pay for reduced rates for purchasers of insurance. In contrast, the Commission's approach in proposed rule 3010.24 would limit how the Postal Service could use price cap authority generated by reducing rates for the many mailers who would be eligible to participate in rate incentives not of general applicability.⁹ The result of this improper and inconsistent treatment would be to keep the Postal Service from using its entire CPI pricing authority established by 39 U.S.C. § 3622(d), and to discourage the Postal Service from developing targeted rate incentives that could more effectively drive beneficial mailer behaviors. Consequently, the Postal Service encourages the Commission to allow all rate incentives to be included in the price cap calculations under the procedures in proposed section 3010.23(e).¹⁰

Finally, with respect to the application of proposed rule 3010.1(g) to international rates (both inbound and outbound), the Postal Service notes that the definition's failure to reference international rates published in the IMM makes it unclear how such rates will be treated during the annual price cap calculation. In particular, the Postal Service questions whether 3010.1(g)'s definition of a rate of general applicability could include inbound or outbound international rates.¹¹

⁸ Docket No. R2013-7, Order No 1756: Order Granting Market Dominant Price Adjustment for Insurance, at 3, 8 (June 21, 2013).

⁹ The fact that many mailers are able to participate in rate incentives not of general applicability also highlights why such rate incentives are fundamentally different from NSAs, which typically only benefit a single mailer.

¹⁰ However, the Postal Service believes that it would be acceptable to exclude promotions that, like NSAs, apply to just a single mailer.

¹¹ For example, since terminal dues rates (paid by foreign postal operators for inbound letter post mail and inbound surface parcels dispatched to the United States) are not published in the MCS or DMM, it is unclear whether the Commission would consider these prices to be rates of general applicability.

III. Adjustments for the Deletion of Rate Cells:

On page 12 of The Order, the Commission proposes the addition of section 3010.23(d)(4), which specifies that “when the Postal Service deletes a rate cell, and there is not a reasonable substitute available, the Postal Service should adjust the billing determinants for that rate cell to zero.” The Commission notes that this proposed rule is designed to ensure “that mailers within a class are not harmed by large increases when the Postal Service deletes a rate cell.”¹² As an example of how the billing determinants should be adjusted, the Commission points to the Postal Service’s treatment of the Package Services billing determinants in Docket No. R2013-1 (the first pricing case after the transfer of Parcel Post to the Competitive product list).

While the Postal Service supports proposed rule 3010.23(d)(4) in the context of the Parcel Post example (e.g. where the Postal Service has unambiguously deleted a rate cell in draft MCS language submitted as part of a rate case), it is concerned about what the Commission means by “deletion of a rate cell.” For example, would the Postal Service have been required to apply this rule to the Full-Service IMb issue from Docket No. R2013-10? In that case it was argued that the implementation of Full-Service IMb as a mail preparation requirement to access automation rates constituted either the redefinition or deletion of the automation rate cells for certain mailers.¹³ However, even the Commission itself could not conclusively determine whether a rate cell had been deleted, or simply been redefined, by implementing the Full-Service IMb requirement.¹⁴

¹² Order No. 1879, at 12.

¹³ See *Generally*, Docket No. R2013-10, Order No. 1890: Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, at 5-37 (November 21, 2013) [*hereafter* “Order 1890”].

¹⁴ Order No. 1890, at 29 (determining that the Full-Service IMb mail preparation requirements “are classification changes that result in the redefinition of rate cells. Alternatively, Full Service IMb

Under these, or similar circumstances, it would not be clear when proposed rule 3010.23(d)(4) should be applied.

The Commission's order in this case is currently on appeal before the United States Circuit Court for the District of Columbia.¹⁵ The D.C. Circuit's decision in that case, which includes the issue of whether a mail preparation requirement can result in the deletion of a rate cell, will help to clarify the breadth and scope of proposed rule 3010.23(d)(4). Accordingly, the Postal Service requests that the Commission delay the implementation of this rule until after the D.C. Circuit's decision is released.

IV. De Minimis Rate Increases:

On page 14 of Order No. 1879, the Commission proposes to add rule 3010.30, which would allow the Postal Service to propose small rate increases below 0.001 percent (for each class of mail) without having to immediately calculate the annual price cap limitation and bank any unused pricing authority. The procedures outlined in proposed rule 3010.30 allow the Postal Service to account for any de minimis price increase in the next Type 1-A or Type 1-B rate filing. The Commission believes that this proposal will provide the Postal Service with additional pricing authority, pursuant to 39 U.S.C. 3622(b)(4), but notes that this mechanism should not be used to circumvent the normal price cap rules.¹⁶

While the Postal Service generally supports the proposed procedures for de minimis rate increases, it notes that the 0.001 percent threshold established by rule 3010.30(a)(1) would provide a negligible amount of flexibility, and should be increased

requirements could be viewed as the deletion of rate cells for automation rates for pieces with Basic IMb.").

¹⁵ U.S. Postal Serv. v. Postal Regulatory Comm'n, No. 13-1308 (D.C. Cir. filed Dec. 20, 2013).

¹⁶ Order No. 1879, at 13-14.

to accommodate a greater variety of changes that might occur between Type 1-A and Type 1-B rate cases. For example, using the hybrid year volumes from Q2FY2013 - Q1FY2014, a 0.001 percent threshold would only permit the Postal Service to make changes worth approximately \$290 thousand in First-Class Mail, \$170 thousand in Standard Mail, \$16 thousand in Periodicals, \$8 thousand in Package Services, and \$21 thousand in Special Services. While such values might permit small adjustments to the Move Update Assessment Threshold or the Picture Permit Indicia rate cell, the Postal Service is hard pressed to think of many other examples of when the 0.001 threshold would provide it with meaningful pricing flexibility.

Indeed, the current threshold would not have been sufficient to correct the nonprofit passthrough for Standard Mail 5-digit Automation Flats, which the Commission directed the Postal Service to equalize with its commercial equivalent in Order No. 1890.¹⁷ Even this minor change, which impacted a relatively small number of mailers, resulted in a 0.035 percent increase for Standard Mail.¹⁸ Though this correction occurred in the context of a Type 1-A rate case, had it (or a similarly sized error) been discovered after the close of a rate case, the Postal Service would have been forced to endure the burdensome task of recalculating the annual price cap limitation to fix it.¹⁹ In short, if the Commission truly wishes for proposed section 3010.30 to provide the Postal Service with additional pricing flexibility, it should increase the current threshold.

¹⁷ Order No. 1890, at 106.

¹⁸ Given that even the above nonprofit example fell well above the proposed de minimis limitation, the Postal Service suggests that the Commission raise the threshold to at least 0.05 percent. Even with a somewhat higher threshold, the De Minimis procedures as proposed in rule 3010.30 would still continue to ensure that the Postal Service remained bound by the annual price cap limitation.

¹⁹ In this regard, it is noteworthy that many rate errors are not discovered until after mailers begin implementing the new set of rates. Accordingly, an increased threshold for de minimis price increases would provide the Postal Service with significant pricing flexibility by allowing it to correct minor rate anomalies as they surface in the days, weeks, and months following a Type 1-A or Type 1-B case.

V. Conclusion

The Postal Service appreciates the opportunity to advise the Commission in this Rulemaking and looks forward to providing further feedback in its reply comments.

Respectfully submitted,

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